Supreme Court, U.S.
FILED
OCT 3 1986
JOSEPH F. SPANIOL, JR.
CLERK

(5)

No. 86-287

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

CROWN OIL CORPORATION;
GRANEX CORPORATION, U.S.A.
and PAN PACIFIC COMMODITIES,

Appellants,

v.

LAPIDUS POPCORN, INC.,

Appellee.

BRIEF IN OPPOSITION TO MOTION OF OIL COMPANY AMICI FOR LEAVE TO FILE AMICUS BRIEF

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Appellant, Lapidus Popcorn, Inc., pursuant to Rule 36.3, objects to the motion of the six oil company *amici* for leave to file an *amicus* brief because: (1) the filing of an *amicus* brief without obtaining the consent is "not favored"; (2) the offered *amicus* brief does not discuss the jurisdictional question, which is the only issue now before this Court; (3) *amici* did not address a written request to the parties requesting consent to file their brief; and (4) *amici* have not stated that the appellants' jurisdictional brief was inadequate. Thus, *amici*'s brief deals only with the merits of the appeal itself and has nothing to do with the jurisdictional issue.

As this Court knows, this appeal has been taken from the overruling of a demurrer in the California Superior Court, which ruling was affirmed by the California Court

of Appeal. See, Crown Oil Corporation v. Superior Court (1986) 177 Cal. App. 3d 604, 223 Cal. Rptr. 164.

As this Court also knows, the undisputed facts of this case show that there was no prior federal antitrust judgment that could possibly conflict with this state-court action. The federal case involved a settlement of a disputed federal action with a specific disclaimer of any antitrust liability. Significantly, none of the federal plaintiffs was paid any cash, but merely received so-called "script" for future purchases of coconut oil. The cash payment of some $2 million was reserved for the federal plaintiffs' counsel. Additionally, there was no evidence that the federal direct-purchasing class member who resold to Lapidus even participated in the federal settlement fund. Therefore, as this action

is in its initial pleading stages and there was no evidence of even a remote possiblity of multiple liability, the appeal should be dismissed.

Thus, as amici have failed to address this jurisdictional issue, Appellant respectfully suggests that this motion to file an amicus brief be denied.

Dated: September 30, 1986

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By Francis O. Scarpulla
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PROOF OF SERVICE BY MAIL

I declare that I am employed in the office of a member of the bar of this Court at whose direction service of the attached document was made.

I am over the age of 18 and not a party to this action. My business address is 423 Washington Street, Fourth Floor, San Francisco, California 94111.

On the 6th day of October, 1986, I served the attached document to the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at San Francisco, California, addressed as follows:

(SEE ATTACHED SERVICE LIST)

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